

PUBLIC CHAPTER NO. 338**SENATE BILL NO. 2169****By Kyle, Tate, Marrero, Burks, Harper****Substituted for: House Bill No. 2232****By Briley, Odom**

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 2, Part 3, relative to civil penalty authority of the department of commerce and insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 2, Part 3, is amended by adding the following as a new, appropriately designated section:

(a) If, after providing notice consistent with the process established by Section 4-5-320(c) and providing the opportunity for a contested case hearing held in accordance with Title 4, Chapter 5, Part 3, the commissioner finds that any insurer, person, or entity required to be licensed, permitted, or authorized by the division of insurance has violated any statute, rule or order, the commissioner may, at the commissioner's discretion, order:

(1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation;

(2) Payment of a monetary penalty of not more than one thousand dollars (\$1,000) for each violation, but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000), unless the insurer, person, or entity knowingly violates a statute, rule or order, in which case the penalty shall not be more than twenty-five thousand dollars (\$25,000) for each violation not to exceed an aggregate penalty of two hundred fifty thousand dollars (\$250,000). This subdivision shall not apply where a statute or rule specifically provides for other civil penalties for such violation. For purposes of this subdivision, each day of continued violation shall constitute a separate violation; and

(3) The suspension or revocation of the insurer, person, or entity's license.

(b) In determining the amount of penalty to assess under this section, or in determining whether the violation was a knowing violation for the purpose of subdivision (a)(2), the commissioner shall consider any evidence relative to the following criteria:

(1) Whether the insurer, person or entity could reasonably have interpreted its actions to be in compliance with the obligations required by a statute, rule or order;

(2) Whether the amount imposed will be a substantial economic deterrent to the violator;

(3) Whether the amount imposed would put the violator in a hazardous financial condition;

(4) The circumstances leading to the violation;

(5) The severity of the violation and the risk of harm to the public;

(6) The economic benefits gained by the violator as a result of non-compliance; and

(7) The interest of the public.

In addition, the commissioner may consider the insurer, person, or entity's efforts to cure the violation.

(c) Notwithstanding the limitations set forth in subdivision (a)(2), no aggregate penalty limits shall apply to the following:

(1) Failure to file audited statements required pursuant to § 56-1-501(h) and rules promulgated thereunder;

(2) Failure to file quarterly financial statements as required by statute or regulation;

(3) Failure to file actuarial opinions pursuant to § 56-1-501(d) and rules promulgated thereunder;

(4) Failure to file annual reports pursuant to §§ 56-19-119, 56-28-111, 56-29-113, 56-30-117, 56-31-116, 56-43-108, and 56-44-104;

(5) Failure to file a risk-based capital report pursuant to § 56-46-103;

(6) Violations of orders issued after a contested case hearing held in accordance with Title 4, Chapter 5, Part 3, and pursuant to subdivision (a)(1) of this section.

(d) This section does not apply to individual or business entity insurance producers licensed pursuant to Title 56, Chapter 6, Part 1.

(e) Notwithstanding any law to the contrary, civil penalties received under the authority of this section shall be utilized by the Department of Commerce and Insurance, in the discretion of the

commissioner, to either defray its expenses related to the liquidation of insurance companies as provided by Chapter 9 of this title, promote consumer awareness of insurance, or provide training or educational opportunities to employees of the division of insurance. Any subaccount currently used by the department for training and education may also be used for the promotion of consumer awareness.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 21, 2007



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 4th day of June 2007



PHIL BREDESEN, GOVERNOR